

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MATTHEW TUCKER, individually and on
behalf of all other similarly situated,

Plaintiff,

v.

SCOUT INDUSTRIES, LLC, a California
limited liability company,

Defendant.

NO.

**COMPLAINT – CLASS ACTION FOR
DAMAGES PURSUANT TO
47 U.S.C. § 227, *et seq.* (TELEPHONE
CONSUMER PROTECTION ACT)**

DEMAND FOR JURY TRIAL

Plaintiff Matthew Tucker (“Plaintiff”) brings this Class Action Complaint against Defendant Scout Industries (“Scout”), on behalf of himself and all others similarly situated, and complains and alleges upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

I. INTRODUCTION

1. Scout offers online marketing services for small business owners who want to “build a premium Google business listing.”¹ In an effort to market its products and services, Scout sent (or directed to be made on its behalf) calls to the wireless telephones of Plaintiff and

¹ Scout Industries, <http://www.scoutindustries.com> (last visited May 27, 2015).

1 each of the members of the Class without prior express written consent² in violation of the
2 Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”).

3 2. Neither Plaintiff nor the other Class members ever consented in writing,
4 authorized, desired or permitted Scout to make calls to their wireless telephones.

5 3. By making such unauthorized calls, Scout caused Plaintiff and each of the Class
6 members actual harm, including the aggravation and nuisance that necessarily accompanies the
7 receipt of unsolicited calls, and the monies paid to their wireless carriers for the receipt of such
8 calls.

9 4. In order to redress these injuries, Plaintiff seeks an injunction requiring Scout to
10 cease all unsolicited calling activities, and an award of statutory damages to the Class members
11 under the TCPA, together with costs and reasonable attorneys’ fees.

12 II. JURISDICTION AND VENUE

13 5. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331
14 because it arises under the laws of the United States.

15 6. This Court has personal jurisdiction over Scout under the Washington Long-
16 Arm Statute, Wash. Rev. Code Ann. § 4.28.185, because Scout conducts and carries on
17 business in this state. By engaging in business solicitation activities in this State, Scout has
18 submitted itself to Washington’s jurisdiction.

19 7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a
20 substantial part of the events that give rise to the claims herein occurred in this District.

21 III. PARTIES

22 8. Plaintiff Matthew Tucker (“Plaintiff”) is an individual domiciled in Tacoma,
23 Washington.

24
25
26 ² As of October 16, 2013, prior express *written* consent is required. *See In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order (FCC Feb. 15, 2012) (amending 47 C.F.R. 64.1200(a)(2)).

9. Defendant Scout Industries (“Scout”) is a California limited liability company with headquarters located at 615 S State College Blvd, Fullerton, CA 92831. Scout conducts business throughout this District and the United States.

IV. FACTUAL BACKGROUND

10. Companies have employed advanced technologies that make it easier to market their products and services. According to a recent report examining class actions under the TCPA in the Northern District of Illinois.

Autodialers (also known as robocalls) automatically deliver a prerecorded message to a list of telephone numbers, and thus remove the need for human representatives. These predictive dialers were developed to find better pacing (scheduling of dialing attempts) by collecting and analyzing data on the proportion of call attempts that are answered, durations of time from call initiation to answer, and durations of service. The technology was designed to minimize both the time that telemarketers must spend waiting between conversations and amount of abandoned calls experienced by consumers.³

11. At all relevant times, Plaintiff was the subscriber of the wireless telephone number ending in 1712.

12. On February 11, 2014 at approximately 1:31 p.m., and on February 12, 2014 at approximately 9:51 a.m., Plaintiff received calls to his wireless telephone.

13. Plaintiff’s caller identification system listed the calling number as (949) 281-0045.

14. Upon answering the calls, an automated recorded message stated that recipient’s business needed to be updated on Google because the business was not listed at the top of Google’s search-listings.

15. The automated recorded message stated that Scout could get the recipient’s business listed at the very top of Google’s search-listings.

³ Institute for Consumer Antitrust Studies, Loyola University Chicago School of Law, *The Telephone Consumer Protection Act of 1991: Adapting Consumer Protection to Changing Technology* 7 (Fall 2013) (emphasis added). The report “was made possible through a cy pres distribution from a class action involving the TCPA in the Northern District of Illinois under the supervision of Senior Judge William Hart and Magistrate Judge Morton Denlow.” *Id.* at 2.

1 16. The automated recorded message prompted the recipient to press a certain
2 number to speak with a representative, or in the alternative, press a certain number to have his
3 telephone number removed.

4 17. On at least one occasion, Plaintiff pressed the number to have his telephone
5 number removed.

6 18. Nevertheless, Scout continued to call Plaintiff's wireless telephone.

7 19. On at least one occasion, Plaintiff called Scout and complained about the calls.

8 20. One of Scout's representatives offered to take Plaintiff's telephone number off
9 of its call list.

10 21. Plaintiff agreed.

11 22. Despite Scout's claim that it had removed Plaintiff's telephone number from its
12 call list, Plaintiff continued to receive automated recorded calls from Scout several times a day
13 for months afterwards.

14 23. On or about November 12, 2014, Plaintiff received another telephone call from
15 Scout.

16 24. Plaintiff pressed the number to speak with a representative and was connected to
17 a person named Ashley.

18 25. Plaintiff informed Ashley that: (1) his phone number was on the federal Do-Not-
19 Call-List; (2) his number was assigned to a wireless telephone; and (3) Scout did not have his
20 consent to call his wireless telephone.

21 26. Plaintiff also informed Ashley of the federal and state law violations for using
22 automated dialers and recorded messages to make unsolicited telemarketing calls to wireless
23 telephones.

24 27. Ashley hung-up on Plaintiff.

25 28. Scout continued to call Plaintiff's wireless telephone number.

26 29. On information and belief, Scout has made and continues to make phones calls
to Plaintiff's and the Class members' wireless telephones without prior express written consent
as part of its advertising campaign.

36. **Commonality and Predominance – Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3).** This action involves common questions of law and fact, which predominate over any questions affecting individual Class members, including, without limitation:

- a. whether Scout's conduct constitutes a violation of the TCPA;
- b. whether the equipment Scout (or someone on Scout's behalf) used to make the calls in question was an automatic telephone dialing system as contemplated by the TCPA;
- c. whether the equipment Scout (or someone on Scout's behalf) used to make the calls in question utilized an artificial or prerecorded voice as contemplated by the TCPA;
- d. whether Plaintiff and the Class are entitled to actual, statutory, or other forms of damages, and other monetary relief and, in what amount(s);
- e. whether Plaintiff and the Class are entitled to treble damages based on the willfulness of Scout's conduct; and
- f. whether Plaintiff and the Class are entitled to equitable relief, including but not limited to injunctive relief and restitution.

37. **Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiff's claims are typical of the other Class members' claims because, among other things, all Class members were comparably injured through the uniform prohibited conduct described above.

38. **Adequacy of Representation – Federal Rule of Civil Procedure 23(a)(4).** Plaintiff is an adequate representative of the Class because his interests do not conflict with the interests of the other Class members he seeks to represent; he has retained counsel competent and experienced in complex commercial and class action litigation; and Plaintiff intends to prosecute this action vigorously. The interests of the Class members will be fairly and adequately protected by the Plaintiff and his counsel.

39. **Declaratory and Injunctive Relief – Federal Rule of Civil Procedure 23(b)(2).** Scout has acted or refused to act on grounds generally applicable to Plaintiff and the other Class members, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to Class as a whole.

1 40. **Superiority – Federal Rule of Civil Procedure 23(b)(3).** A class action is
 2 superior to any other available means for the fair and efficient adjudication of this controversy,
 3 and no unusual difficulties are likely to be encountered in the management of this class action.
 4 The damages or other financial detriment suffered by Plaintiff and the other Class members are
 5 relatively small compared to the burden and expense that would be required to individually
 6 litigate their claims against Scout, so it would be impracticable for Class members to
 7 individually seek redress for Scout's wrongful conduct. Even if Class members could afford
 8 individual litigation, the court system could not. Individualized litigation creates a potential for
 9 inconsistent or contradictory judgments, and increases the delay and expense to all parties and
 10 the court system. By contrast, the class action device presents far fewer management
 11 difficulties, and provides the benefits of single adjudication, economy of scale, and
 12 comprehensive supervision by a single court.

13 **VI. CLAIM ALLEGED - COUNT I**

14 **Violation of the TCPA, 47 U.S.C. § 227**

15 41. Plaintiff incorporates by reference the foregoing allegations as if fully set forth
 16 herein.

17 42. Scout and/or its agents made phone calls to the wireless telephone numbers of
 18 Plaintiff and the other Class members *en masse* without their prior express consent.

19 43. Scout made the calls, or had them sent on its behalf, using equipment that had
 20 the capacity to store or produce telephone numbers to be called using a random or sequential
 21 number generator, and to dial such numbers.

22 44. Scout utilized equipment that made the calls to Plaintiff's and other Class
 23 members' wireless telephones simultaneously and without human intervention.

24 45. Scout made the calls, or had them sent on its behalf, using an artificial and/or
 25 prerecorded voice.

26 46. By making the calls to Plaintiff and the Class, Scout has violated 47 U.S.C. §
 227(b)(1)(A)(iii). As a result of Scout's unlawful conduct, the Class members suffered actual
 damages in the form of monies paid to receive the calls on their wireless phones and under

1 section 227(b)(3)(B) are each entitled to, *inter alia*, a minimum of \$500.00 in damages for each
 2 such violation of the TCPA.

3 47. Should the Court determine that Scout's conduct was willful or knowing, the
 4 Court may, pursuant to section 227(b)(3)(C), treble the amount of statutory damages
 5 recoverable by Plaintiff and the other Class members.

6 **VII. JURY DEMAND**

7 48. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by
 8 jury of all claims in this Complaint so triable.

9 **VIII. REQUEST FOR RELIEF**

10 WHEREFORE, Plaintiff Matthew Tucker, individually and on behalf of the Class,
 11 requests that the Court enter an Order as follows:

- 12 A. Certifying the Class as defined above, appointing Plaintiff Matthew Tucker as
 13 the representative of the Class, and appointing his counsel as Class Counsel;
- 14 B. Awarding of actual or statutory damages;
- 15 C. Requiring Scout to cease all wireless phone call activities initiated without prior
 16 express written consent, and otherwise protecting the interests of the Class;
- 17 D. Awarding of reasonable attorneys' fees and costs; and
- 18 E. Awarding such other and further relief that the Court deems reasonable and just.

19 DATED this 15th day of July, 2015.

Respectfully submitted,

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24 *Pro hac vice application forthcoming

25 *Counsel for Plaintiff and all similarly situated*
26 *persons and entities*